IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

BENEFICIAL INNOVATIONS, INC., Plaintiff, v. BLOCKDOT, INC.; CAREERBUILDER, LLC; CNET NETWORKS, INC.; DIGG, INC.; EBAUM'S WORLD, INC.; JABEZ NETWORKS, INC.; THE NEW YORK TIMES COMPANY; WASHINGTONPOST.NEWSWEEK INTERACTIVE COMPANY, LLC; THE WEATHER CHANNEL INTERACTIVE, INC. Defendants.	)	Civ. A. No. 2:07-CV-263-TJW/CE

DEFENDANT WASHINGTONPOST.NEWSWEEK INTERACTIVE COMPANY'S
ANSWER TO SECOND AMENDED COMPLAINT

Defendant WashingtonPost.Newsweek Interactive Company, LLC ("WPNI") hereby answers the allegations of the Second Amended Complaint ("Complaint") of Plaintiff Beneficial Innovations, Inc. ("Beneficial") in this matter as follows:

Introduction

1. WPNI admits that United States Patent No. 6,712,702 (the "'702 Patent") is entitled "Method and System for Playing Games on a Network" and that United States Patent No. 6,183,366 (the "'366 Patent") is entitled "Network Gaming System." WPNI states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations as to Beneficial's ownership of the '702 Patent or '366 Patent as set forth in paragraph 1 of the Complaint, and on that basis denies those allegations. To the extent that paragraph 1 of the Complaint sets forth allegations regarding WPNI, WPNI denies any and all allegations of

Dockets.Justia.com

paragraph 1 of the Complaint. To the extent that paragraph 1 of the Complaint sets forth allegations regarding defendants other than WPNI, WPNI states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 of the Complaint and on that basis denies those allegations. The final sentence in paragraph 1 of the Complaint states Beneficial's request for relief for which no response is required. To the extent a response is required, WPNI denies the allegations set forth in the final sentence of paragraph 1 of the Complaint and denies that Beneficial is entitled to any of the relief requested therein, or to any relief whatsoever. WPNI denies any and all other allegations set forth in paragraph 1 of the Complaint.

Jurisdiction and Venue

2. WPNI admits that this Complaint alleges that this is an action arising under the patent laws of the United States, Title 35, United States Code. The remainder of paragraph 2 of the Complaint states a legal conclusion to which no response is required. To the extent that a response is required, WPNI admits that this Court has original jurisdiction over patent infringement actions under 28 U.S.C. § 1338. WPNI denies any patent infringement and any and all other allegations set forth in paragraph 2 of the Complaint.

3. To the extent that the first sentence of paragraph 3 of the Complaint sets forth allegations regarding WPNI, WPNI denies the allegations of the first sentence of paragraph 3 of the Complaint. To the extent that the first sentence of paragraph 3 of the Complaint sets forth allegations regarding defendants other than WPNI, WPNI states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first sentence of paragraph 3 of the Complaint and on that basis denies those allegations. The remainder of paragraph 3 of the Complaint states a legal conclusion to which no response is

required. To the extent that a response is required, WPNI denies any and all of the allegations set forth in the remainder of paragraph 3 of the Complaint. To the extent that paragraph 3 of the Complaint sets forth allegations regarding defendants other than WPNI, WPNI states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of the Complaint and on that basis denies those allegations.

Plaintiff Beneficial Innovations

4. WPNI states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 4 of the Complaint.

Defendants

5. WPNI states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 of the Complaint.

6. WPNI states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6 of the Complaint.

7. WPNI states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 of the Complaint.

8. WPNI states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 8 of the Complaint.

9. WPNI states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 9 of the Complaint.

10. WPNI states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 10 of the Complaint.

11. WPNI states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 11 of the Complaint.

12. WPNI admits the allegations set forth in paragraph 12 of the Complaint.

13. WPNI states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 13 of the Complaint.

First Claim for Patent Infringement

14. WPNI incorporates by reference each of its responses in paragraphs 1-13 above.

15. WPNI admits that the United States Patent and Trademark Office issued the ’702 Patent on March 30, 2004, and that a copy of the ’702 Patent is lodged as an exhibit to the Complaint. WPNI denies that the ’702 Patent was duly and legally issued. WPNI states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations as to Beneficial’s ownership of the ’702 Patent and on that basis denies any and all other allegations set forth in paragraph 15 of the Complaint.

16. To the extent that paragraph 16 of the Complaint sets forth allegations regarding WPNI, WPNI denies any and all allegations of paragraph 16 of the Complaint. To the extent that paragraph 16 of the Complaint sets forth allegations regarding defendants other than WPNI, WPNI states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 16 of the Complaint and on that basis denies those allegations.

17. To the extent that paragraph 17 of the Complaint sets forth allegations regarding WPNI, WPNI denies any and all allegations of paragraph 17 of the Complaint. To the extent that paragraph 17 of the Complaint sets forth allegations regarding defendants other than WPNI, WPNI states that it is without knowledge or information sufficient to form a belief as to

the truth of the allegations set forth in paragraph 17 of the Complaint and on that basis denies those allegations.

18. To the extent that paragraph 18 of the Complaint sets forth allegations regarding WPNI, WPNI denies any and all allegations of paragraph 18 of the Complaint. To the extent that paragraph 18 of the Complaint sets forth allegations regarding defendants other than WPNI, WPNI states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 18 of the Complaint and on that basis denies those allegations.

19. To the extent that paragraph 19 of the Complaint sets forth allegations regarding WPNI, WPNI denies any and all allegations of paragraph 19 of the Complaint. To the extent that paragraph 19 of the Complaint sets forth allegations regarding defendants other than WPNI, WPNI states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 19 of the Complaint and on that basis denies those allegations.

20. Paragraph 20 sets forth Beneficial's request for a jury trial, for which no response is required.

Second Claim for Patent Infringement

21. WPNI incorporates by reference each of its responses in paragraphs 1-20 above.

22. WPNI admits that the United States Patent and Trademark Office issued the '366 Patent on February 6, 2001, and that a copy of the '366 Patent is lodged as an exhibit to the Complaint. WPNI denies that the '366 Patent was duly and legally issued. WPNI states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations

as to Beneficial's ownership of the '366 Patent and on that basis denies any and all other allegations set forth in paragraph 22 of the Complaint.

23. To the extent that paragraph 23 of the Complaint sets forth allegations regarding WPNI, WPNI denies any and all allegations of paragraph 23 of the Complaint. To the extent that paragraph 23 of the Complaint sets forth allegations regarding defendants other than WPNI, WPNI states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 23 of the Complaint and on that basis denies those allegations.

24. To the extent that paragraph 24 of the Complaint sets forth allegations regarding WPNI, WPNI denies any and all allegations of paragraph 24 of the Complaint. To the extent that paragraph 24 of the Complaint sets forth allegations regarding defendants other than WPNI, WPNI states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 24 of the Complaint and on that basis denies those allegations.

25. To the extent that paragraph 25 of the Complaint sets forth allegations regarding WPNI, WPNI denies any and all allegations of paragraph 25 of the Complaint. To the extent that paragraph 25 of the Complaint sets forth allegations regarding defendants other than WPNI, WPNI states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 25 of the Complaint and on that basis denies those allegations.

26. To the extent that paragraph 26 of the Complaint sets forth allegations regarding WPNI, WPNI denies any and all allegations of paragraph 26 of the Complaint. To the extent that paragraph 26 of the Complaint sets forth allegations regarding defendants other than

WPNI, WPNI states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 26 of the Complaint and on that basis denies those allegations.

27. Paragraph 27 sets forth Beneficial's request for a jury trial, for which no response is required.

28. The "WHEREFORE" paragraph following paragraph 27 of the Complaint states Beneficial's prayer for relief for which no response is required. To the extent a response is required, WPNI denies the allegations set forth in the "WHEREFORE" paragraph following paragraph 27 of the Complaint and denies that Beneficial is entitled to any of the relief requested therein, or to any relief whatsoever.

AFFIRMATIVE DEFENSES

WPNI sets forth the following affirmative and other defenses. In so doing, WPNI does not assume the burden of proof with respect to those matters as to which, pursuant to law, Beneficial bears the burden.

First Defense

29. The Complaint fails to state a claim upon which relief can be granted against WPNI.

Second Defense

30. WPNI has not infringed or induced infringement by another or contributed to infringement, and does not infringe or induce infringement by another or contribute to infringement, of any valid claim of the '702 Patent.

31. WPNI has not infringed or induced infringement by another or contributed to infringement, and does not infringe or induce infringement by another or contribute to infringement, of any valid claim of the ’366 Patent.

Third Defense

32. The ’702 Patent is invalid for failure to meet one or more conditions for patentability set forth in 35 U.S.C. §§ 101, et seq., including without limitations §§ 101, 102, 103, and 112.

33. The ’366 Patent is invalid for failure to meet one or more conditions for patentability set forth in 35 U.S.C. §§ 101, et seq., including without limitations §§ 101, 102, 103, and 112.

Fourth Defense

34. Enforcement of the ’702 Patent is barred under principles of equity, including prosecution laches.

35. Enforcement of the ’366 Patent is barred under principles of equity, including prosecution laches.

PRAYER FOR RELIEF

WHEREFORE, WPNI respectfully requests the Court enter judgment against Beneficial to include:

(a) The Complaint of Beneficial be dismissed with prejudice;

(b) A declaration that WPNI has not infringed and does not infringe any valid claim of the ’702 patent and that WPNI has not induced infringement of any valid claim of the ’702 patent;

(c) A declaration that WPNI has not infringed and does not infringe any valid claim of the ’366 patent and that WPNI has not induced infringement of any valid claim of the ’366 patent;

(d) A declaration that the ’702 patent is invalid;

(e) A declaration that the ’366 patent is invalid;

(f) WPNI be awarded reasonable costs in connection with this action;

(g) WPNI be awarded its attorneys’ fees pursuant to 35 U.S.C. § 285; and;

(h) All such other and further relief as the Court may deem just and proper.

Dated: September 25, 2007

Respectfully Submitted,

/s/ Michael E. Jones

Michael E. Jones
POTTER MINTON, P.C.
110 North College, Ste. 500
Tyler, Texas 75702
903-597-8311 (telephone)
903-593-0846 (facsimile)
mikejones@potterminton.com

Of counsel:

Glenn J. Pfadenhauer
Aaron P. Maurer
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, NW
Washington, DC 20005
(202) 434-5000
(202) 434-5029 (facsimile)
gpfadenhauer@wc.com
amaurer@wc.com

Attorneys for Defendant WashingtonPost.Newsweek Interactive Company,LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court’s CM/ECF system per Local Rule CV-5(a)(3) on September 25, 2007. Any other counsel of record will be served by First Class mail on this same date.

/s/ Michael E. Jones